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Attorneys for Defendant
KIRKLAND & ELLIS LLP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZOYA KOVALENKO,

Plaintiff,

v.

KIRKLAND & ELLIS LLP, MICHAEL DE
VRIES, MICHAEL W. DEVRIES, P.C.,
ADAM ALPER, ADAM R. ALPER, P.C.,
AKSHAY DEORAS, AKSHAY S. DEORAS,
P.C., LESLIE SCHMIDT, LESLIE M.
SCHMIDT, P.C., AND MARK FAHEY,

Defendants.

Case No. 4:22-CV-05990-HSG

**[PROPOSED] ORDER GRANTING
DEFENDANT KIRKLAND & ELLIS
LLP'S MOTION TO DISMISS**

Date: March 30, 2023
Time: 2:00 p.m.
Dept: 2
Judge: Hon. Haywood S. Gilliam

Pending before the Court is Defendant Kirkland & Ellis LLP's (Kirkland) Motion to Dismiss. Having considered the relevant papers and pleadings on file with the Court in this matter, as well as the arguments of counsel, the Court determines:

1. The Court **DISMISSES, with prejudice**, Plaintiff's claims under the San Francisco Municipal Police Code (Counts 3 and 7) because the claims are preempted by California's Fair Employment and Housing Act.
2. The Court **DISMISSES, with prejudice**, Plaintiff's Title VII Sex Harassment claim (Count 8) because her allegations are premised on allegations state nonactionable allegations of run-of-the-mill personnel management actions that do not constitute harassment as a matter of law, and she has not pled facts showing severe or pervasive conduct.
3. The Court **DISMISSES, with prejudice**, Plaintiff's Defamation claim (Count 10) because the alleged defamatory statements are opinions based on evaluation of Plaintiff's performance, not statements of fact, and are privileged statements.
4. The Court **DISMISSES, with prejudice**, Plaintiff's Intentional Infliction of Emotional Distress claim (Count 11) because Plaintiff has not pled sufficient facts showing "extreme and outrageous" conduct or that she suffered severe emotional distress.
5. The Court **DISMISSES, with prejudice**, Plaintiff's Negligent Infliction of Emotional Distress claim (Count 12) because it is preempted by California's Worker's Compensation Act, is based on nonactionable personnel management, and is based on purported duties her employer Kirkland did not owe her as a matter of law.
6. The Court **DISMISSES, with prejudice**, Plaintiff's punitive damages claim because Plaintiff does not plead facts supporting oppression, fraud or malice.

Accordingly, Kirkland's Motion to Dismiss is **GRANTED**, and Plaintiff's third, seventh, eighth, tenth, eleventh, and twelfth causes of action, and Plaintiff's punitive damages claim, are **DISMISSED with prejudice**, as set forth above.

IT IS SO ORDERED

Dated: _____

HON. HAYWOOD S. GILLIAM
U.S. DISTRICT COURT JUDGE

[PROPOSED] ORDER GRANTING
DEFENDANT KIRKLAND & ELLIS LLP'S
MOTION TO DISMISS [4:22-cv-05990-HSG]